

2/6/18

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CLERK, U.S. DISTRICT COURT,  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY CLERK

2/6/18

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

**FILED**

Feb 06, 2018

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**IN RE: FORD MOTOR CO. DPS6 POWERSHIFT  
TRANSMISSION PRODUCTS LIABILITY  
LITIGATION**

MDL No. 2814

**TRANSFER ORDER**

**Before the Panel:**\* Defendant Ford Motor Company moves under 28 U.S.C. § 1407 to centralize this litigation in the Central District of California. This litigation currently consists of 110 actions pending in seven districts, as listed on Schedule A.<sup>1</sup> Since the filing of the motion, the Panel has been notified of 57 related federal actions.<sup>2</sup>

Plaintiffs in 60 actions on the motion and 32 potential tag-along actions, represented by two law firms, oppose centralization. At oral argument, opposing plaintiffs in all but one of those actions stated that the Central District of California would be an acceptable choice to plaintiffs. Plaintiffs in the remaining 50 actions on the motion have not responded and thus are deemed to have acquiesced in the motion under Panel Rule 6.1(c).

The plaintiffs opposing centralization do not dispute that all actions present factual questions concerning the allegedly defective DPS6 PowerShift transmission in certain Ford Fiesta and Ford Focus vehicles. Instead, they argue that centralization is not appropriate because the actions also involve individualized questions of fact regarding the problems experienced by each plaintiff's vehicle, the nature and number of repairs, the efficacy of the repairs, and the extent to which the alleged defect impaired each plaintiff's use of the vehicle. They further identify a handful of cases alleging additional problems unrelated to the transmission. But the central question in all actions is whether the DPS6 PowerShift transmission is defective and, as a result, caused operational problems relating to the transmission that affect the drivability, safety, and value of the vehicles. Product liability litigation typically involves some plaintiff-specific factual issues, but centralization still may be warranted where the actions allege a common defect involving similar products manufactured by the same company. *See In re: MI Window and Doors, Inc., Prods. Liab. Litig.*, 857

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\* Certain Panel members who could be members of the putative classes in this litigation have renounced their participation in the classes and have participated in this decision.

<sup>1</sup> The motion for centralization lists 111 actions. One action (*Rerich*) recently was terminated without prejudice pursuant to a joint stipulation of the parties.

<sup>2</sup> These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1 and 7.2.

F. Supp. 2d 1374, 1375 (J.P.M.L. 2012). Transfer under Section 1407 does not require a complete identity of factual issues when the actions arise from a common factual core. *See In re: Kugel Mesh Hernia Patch Prods. Liab. Litig.*, 493 F. Supp. 2d 1371, 1372 (J.P.M.L. 2007).

Plaintiffs further argue that centralization would be unjust on the ground that Ford improperly removed the vast majority of cases to avoid adverse state court rulings, and many plaintiffs have remand motions pending. It is well-established that jurisdictional objections, including objections to removal, are not relevant to transfer. This is so even where, as here, plaintiffs assert that the removals were patently improper. “Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.” *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990). Plaintiffs alternatively request a delay or stay of the decision on centralization until their motions for remand to state court are decided, but there is no persuasive basis to do so. The Panel’s longstanding practice is to decide motions to transfer even though remand motions are pending, as plaintiffs can present those motions to the transferee court. *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Additionally, plaintiff in *Hibdon* argues that Ford intends to use the MDL to delay resolution of the cases and coerce plaintiffs into undesirable settlements. But plaintiff’s concerns about litigation delays and the future of settlement discussions are highly speculative. Moreover, these essentially are case management issues. As we have observed, “[i]t is incumbent upon the parties to bring their concerns to the attention of the transferee court and to propose ways to resolve them.” *See In re: Walgreen’s Herbal Supplements Mktg. and Sales Practices Litig.*, 109 F. Supp. 3d 1373, 1376 (J.P.M.L. 2015).

On the basis of the papers filed and the hearing session held, we find that these actions involve common questions of fact, and that centralization will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. The actions share complex factual questions arising out of allegations that the DPS6 PowerShift Transmission installed in certain Ford Fiesta and Ford Focus vehicles<sup>3</sup> is defective and negatively affects the drivability, safety, and useful life of the vehicles. The actions allege that plaintiffs’ vehicles suffer from similar transmission-related problems, including slipping, bucking, jerking, sudden acceleration, delayed acceleration and downshifting, and premature wear that requires repair or replacement. Common factual questions include (1) whether the design or manufacturing of the PowerShift transmission is defective; (2) defendant’s knowledge of, and conduct in response, to the alleged defect; and (3) whether vehicle owners and lessees have suffered a diminution in vehicle value or other economic damages. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary.

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<sup>3</sup> The allegations involve Ford Fiesta model years 2011 to 2016 and Ford Focus model years 2012 to 2016.

We conclude that the Central District of California is an appropriate transferee district for this litigation. The vast majority of the actions are pending in California, including 35 actions in the Central District. Centralization in this district also will facilitate coordination with California state court litigation involving the same alleged defect. Judge André Birotte, Jr., managed a related nationwide class action settlement involving the same Ford vehicles and alleged transmission defect,<sup>4</sup> and thus is familiar with the factual and legal issues in this litigation. He presides over the actions pending in this district, and is an experienced transferee judge. We are confident he will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the Central District of California are transferred to the Central District of California and, with the consent of that court, assigned to the Honorable André Birotte, Jr., for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Lewis A. Kaplan  
R. David Proctor

Charles R. Breyer  
Ellen Segal Huvelle  
Catherine D. Perry

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<sup>4</sup> See *Vargas v. Ford Motor Co.*, C.A. No. 12-8388 (C.D. Cal).

**IN RE: FORD MOTOR CO. DPS6 POWERSHIFT  
TRANSMISSION PRODUCTS LIABILITY  
LITIGATION**

MDL No. 2814

**SCHEDULE A**

Central District of California

HIBDON v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-06355  
ALONSO v. FORD MOTOR COMPANY, C.A. No. 2:17-06622  
FORT v. FORD MOTOR COMPANY, C.A. No. 2:17-06631  
BAGWELL v. FORD MOTOR COMPANY, C.A. No. 2:17-06632  
BARRALES v. FORD MOTOR COMPANY, C.A. No. 2:17-06638  
GIBSON v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-06644  
HERMOSILLO v. FORD MOTOR COMPANY, C.A. No. 2:17-06651  
MAGANA, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-06653  
MEJIA v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-06654  
PEDANTE v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-06656  
RULE v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07204  
PADILLA v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07236  
HOGGE v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07256  
GOMEZ v. FORD MOTOR COMPANY, C.A. No. 2:17-07262  
CRESPO v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07297  
HIATT v. FORD MOTOR COMPANY, C.A. No. 2:17-07321  
TRUJILLO, ET AL. v. FORD MOTOR COMPANY, C.A. No. 2:17-07322  
ALTAMIRANO-TORRES v. FORD MOTOR COMPANY, ET AL.,  
C.A. No. 2:17-07338  
ALTIKRITI, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07369  
DOBIAS v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07370  
CASTANEDA v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07416  
SULLIVAN v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07497  
EMHARDT v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07533  
MOBLEY v. FORD MOTOR COMPANY, ET AL., C.A. No. 2:17-07554  
WRIGHT, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-01982  
PAPAMICHAEL v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-01986  
RODRIGUEZ, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02007  
PADILLA, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02015  
WEST v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02018  
BERRY, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02034  
HENRY, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02036  
PEREZ, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02042  
KEATING v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02044  
HERNANDEZ, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02045  
MCGINNIS v. FORD MOTOR COMPANY, ET AL., C.A. No. 5:17-02047

Eastern District of California

ZIMMERSCHIED, ET AL. v. FORD MOTOR COMPANY, C.A. No. 1:17-01317  
SORENSEN, ET AL. v. FORD MOTOR COMPANY, C.A. No. 2:17-01987  
WILLIAMS v. FORD MOTOR COMPANY, C.A. No. 2:17-02006  
MALAGON v. FORD MOTOR COMPANY, C.A. No. 2:17-02051  
VILLALOVOS v. FORD MOTOR COMPANY, C.A. No. 2:17-02053  
BARRACK v. FORD MOTOR COMPANY, C.A. No. 2:17-02078  
LOVEST v. FORD MOTOR COMPANY, C.A. No. 2:17-02079  
CAMARGO v. FORD MOTOR COMPANY, C.A. No. 2:17-02092  
MARQUEZ v. FORD MOTOR COMPANY, C.A. No. 2:17-02140  
GLASSFORD v. FORD MOTOR COMPANY, C.A. No. 2:17-02145  
DOLAN v. FORD MOTOR COMPANY, C.A. No. 2:17-02148  
REYES v. FORD MOTOR COMPANY, C.A. No. 2:17-02151  
NACUA, ET AL. v. FORD MOTOR COMPANY, C.A. No. 2:17-02153  
MARTIN, ET AL. v. FORD MOTOR COMPANY, C.A. No. 2:17-02158

Northern District of California

BRIGGS v. FORD MOTOR COMPANY, C.A. No. 3:17-05762  
HYDE, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05613  
SERVANTES, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05615  
THOMAS, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05619  
MENDEZ, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05620  
MARLOWE v. FORD MOTOR COMPANY, C.A. No. 5:17-05621  
THEADE v. FORD MOTOR COMPANY, C.A. No. 5:17-05643  
SCHATZMAN v. FORD MOTOR COMPANY, C.A. No. 5:17-05669  
TORRES v. FORD MOTOR COMPANY, C.A. No. 5:17-05694  
ACEVES v. FORD MOTOR COMPANY, C.A. No. 5:17-05695  
FORRESTER v. FORD MOTOR COMPANY, C.A. No. 5:17-05698  
TORRES, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05699  
RODRIGUEZ-DIAZ v. FORD MOTOR COMPANY, C.A. No. 5:17-05701  
RODGERS v. FORD MOTOR COMPANY, C.A. No. 5:17-05703  
HERNANDEZ v. FORD MOTOR COMPANY, C.A. No. 5:17-05704  
SIMMONS v. FORD MOTOR COMPANY, C.A. No. 5:17-05705  
INDIVERI v. FORD MOTOR COMPANY, C.A. No. 5:17-05706  
GARCIA v. FORD MOTOR COMPANY, C.A. No. 5:17-05711  
CONNAUGHTON, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05712  
KLEIN v. FORD MOTOR COMPANY, C.A. No. 5:17-05722  
MAGAN, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05730  
KANE, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05745  
MARTINEZ v. FORD MOTOR COMPANY, C.A. No. 5:17-05746  
PADILLA v. FORD MOTOR COMPANY, C.A. No. 5:17-05747

PAYSENO v. FORD MOTOR COMPANY, C.A. No. 5:17-05749  
RAVEN v. FORD MOTOR COMPANY, C.A. No. 5:17-05750  
RIVERA v. FORD MOTOR COMPANY, C.A. No. 5:17-05751  
BECKER, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05765  
GONZALEZ v. FORD MOTOR COMPANY, C.A. No. 5:17-05885  
REINPRECHT v. FORD MOTOR COMPANY, C.A. No. 5:17-05900  
TAVITIAN v. FORD MOTOR COMPANY, C.A. No. 5:17-05915  
ARCHIBALD, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05922  
DILLARD, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-05924  
ESTRADA v. FORD MOTOR COMPANY, C.A. No. 5:17-05925  
AGUILAR v. FORD MOTOR COMPANY, C.A. No. 5:17-05927  
ALLIANO v. FORD MOTOR COMPANY, C.A. No. 5:17-05978  
HESS v. FORD MOTOR COMPANY, C.A. No. 5:17-05996  
ROMERO, ET AL. v. FORD MOTOR COMPANY, C.A. No. 5:17-06022

Southern District of California

MILES, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-01993  
ROJAS, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02005  
RALEIGH v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02035  
CARDOSO v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02037  
ROSE, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02038  
MINKE, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02039  
KENNEDY v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02040  
STANTON v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02043  
MODROW v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02044  
ROCHE v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02045  
REECE v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02046  
MENDOZA v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02047  
SALGADO, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02048  
OMARK v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02049  
MUHAMMAD v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02050  
SMITHFIELD, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02109  
PORTER, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02111  
FUKASAWA, ET AL. v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02116  
BILLIARD v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02121  
ESQUIBEL v. FORD MOTOR COMPANY, ET AL., C.A. No. 3:17-02157

District of Hawaii

HEMZA v. FORD MOTOR COMPANY, ET AL., C.A. No. 1:17-00296

Southern District of Ohio

MARTIN, ET AL. v. FORD MOTOR COMPANY, C.A. No. 1:16-00855

Eastern District of Texas

ASCENSIO, ET AL. v. FORD MOTOR COMPANY, C.A. No. 4:17-00074